IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3847 of 2003

WITH

SPECIAL CIVIL APPLICATION No 3849 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NILABEN WIFE OF NARESH BHATNAGAR

Versus

PREMCHANDNAGAR CO. OP. HOUSINGSOCIETY LTD.

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Appearance:

1. Special Civil Application No. 3847 of 2003

MR ANAND G BHATT for Petitioner No. 1

MR AJAY R MEHTA for Respondent No. 1

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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 18/08/2003

ORAL JUDGEMENT

1. Rule. Mr. Savjani for Mr. Ajay Mehta waives service of rule on behalf of respondents. With the consent of parties, the matters are taken up for final hearing.

2. Both these petitions are against the common judgment of award passed by the Gujarat Co-Operative State Tribunal whereby the appeals preferred by the petitioners were dismissed on the ground of delay, and the matters are not examined on merits.

3. Short facts of the case are that the Society filed suits for recovery of the amount of maintenance, penalty etc. against the petitioners. The suits proceeded exparte and the judgment and the award was passed by the learned Nominee. So far as SCA No. 3847 of 2003 is concerned, the learned Nominee passed an award of Rs.52,200/_ plus interest. So far as SCA No. 3849/03 is concerned, the learned Nominee passed an award of Rs.16,320/_ plus interest. The petitioner preferred appeals and applications for condonation of delay. One of the contentions raised in the appeal was that the petitioner was not communicated with the judgment and award of the learned Nominee. However, before the Tribunal, the registered AD slips were produced and the Tribunal found that the said aspect is suppressed, and, therefore, the appeals were dismissed. The contentions raised by the petitioner is that in the AD slip bears the signature of the daughter of the petitioners who had expired, and, therefore, the receipt of post could not be brought to the notice by the petitioners, and, therefore, the present petition.

4. Mr. Shah appearing with Mr. Bhatt at the outset submitted that the petitioners are ready to show their boanfides by depositing of an amount Rs.30,000/_ in SCA No. 3847/03 and Rs.10,000/_ in SCA No. 3849/03 and cost to respondent Society of Rs.5000/_ and Rs. 3500/_ in SCA No. 3847/03 and 3849/03 respectively if this Court finds that the matters deserve to be remanded to the learned Nominee for re-trial of the suit.

5. Mr. Savjani appearing for the respondent Society submits that the respondent has no objection if the amount as declared by the learned counsel for petitioners is accordingly deposited and the cost is paid to the respondents as per the willingness shown by the learned counsel for the petitioners. In the above view of the matter, I find that when there is consensus of both the

sides for remand of the matter to the learned Nominee on depositing the amount as declared by the learned counsel for the petitioner, no detailed reasons are required to be recorded. The fact remains that the Tribunal has not examined the matter on merits and has dismissed the appeals on the question of delay. It is true that the AD slips were produced on record, but the contention of the petitioners that the AD slips were signed by daughter of the petitioners who has expired and as a result the receipt thereof could not be brought to the notice of the petitioners and consequently the said fact could not be declared in the memo of appeal, appears to be just and proper. At the same time, no litigant who has allowed the proceedings to go in absence can be permitted to take undue benefit, otherwise it would result into encouraging dilatory tactics on the part of the litigants. Therefore, even if the matter of an exparte award which is to be considered by this Court, the order of remand should not be made for retrial without imposing any strict conditions on the party who has remained negligent. As observed earlier, Mr. Shah has shown willingness to deposit the amount, and therefore, I am of the opinion that no further detailed discussions would be required in this regard.

6. In view of the aforesaid and considering the peculiar facts and circumstances of the case, I am of the view that the following directions shall meet with the ends of justice:

(i). The petitioners shall deposit with the respondent No.1 Society within a period of thirty days from today, a sum of Rs.30,000/_ in SCA No. 3847/03 and Rs.10,000/_ in SCA No. 3849/03 and also Rs.5,000/_ and Rs.3500/_ towards costs of the litigations respectively in the aforesaid matters.

(ii) If such amount is deposited by the petitioners with the respondent No.1 Society, it will be open to the petitioner to move an application before the learned Nominee for retrial of the suit and the learned Nominee shall take up the suits for retrial as early as possible and will make an attempt to dispose of the suits as early as possible preferably within a period of one year from the receipt of such application.

(iii) Until the suit is retried and the matter is finally decided by the learned Nominee, the petitioners shall continue to pay the regular

maintenance by accounts payee cheques and if the Society does not accept the same, it will be open to the petitioners to send the cheques by Registered AD post.

(iv) On complying with the condition of deposit of the amount within a period of one month as ordered earlier, the judgment and the award of the learned Nominee as well as the judgment of the learned Tribunal which are under challenge shall stand quashed and set aside and the subsequent judgment and award which may be passed by the learned Nominee after retrial shall remain in operation subject to rights of parties to challenge the same in accordance with law.

(v) It is clarified that the amount deposited by the petitioners shall be subject to the final outcome in the suit proceedings before the learned Nominee after retrial and the Society shall refund the amount or the petitioners shall pay the balance amount as the case may be, within thirty days from the date of the Nominee's judgment and the award which may be passed by the learned Nominee after retrial, without prejudice to the rights of either parties to challenge the order in accordance with law before the appropriate forum.

7. Both these petitions are disposed of in terms of the aforesaid directions. Rule made absolute to the aforesaid extent.

[JAYANT PATEL, J.]
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